Supreme Court, U.S.
FILED
MAR 27 1997
OFFICE OF THE CLERK

No. 96-1354

In The

Supreme Court of the United States

October Term, 1996

ROBERT S. CATZ,

Petitioner,

v.

TRIAL COMMISSIONER JOSEPH R. McDONALD, DOMESTIC RELATIONS DIVISION OF THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, ARIZONA, SUSAN R. CHALKER (Real Party of Interest), FIDELITY INVESTMENTS, TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND, AND WATERHOUSE SECURITIES, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

RESPONDENT TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND'S BRIEF IN OPPOSITION

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LIST OF INTERESTED PARTIES

The petitioner is Robert S. Catz.

The respondents are correctly identified in the caption. Michael J. Rusing is counsel for respondent Teachers Insurance Annuity Association-College Retirement Equity Fund. There are no other interested parties.

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RESPONDENT'S TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITIES FUND'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Teachers Insurance Annuity Association-College Retirement Equities Fund respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of an opinion of the Arizona Court of Appeals, Division Two, entered on May 2, 1996.[1]

STATEMENT OF JURISDICTION

This Court cannot properly exercise jurisdiction over this case pursuant to 28 U.S.C. § 1257(a). Many of the questions presented for review in the Petition were never presented to the Arizona Courts. These newly made arguments may not properly be considered for the first time in this forum. Furthermore, Petitioner Catz failed to properly pursue existing remedies in the Arizona State Courts, both at the trial level in the Pima County Superior Court, and at the Appellate Courts. Amongst other things, the Petitioner never took steps to obtain appropriate appellate review pursuant to applicable Arizona Procedure.

STATEMENT OF THE CASE

Respondent Teachers Insurance Annuity Association-College Retirement Equities Fund ("TIAA-CREF")

[1] On October 25, 1996 the Arizona Supreme Court denied Petitioner's Petition for Review.

respectfully opposes the Petition for Writ of Certiorari because:

A. The Petition assails the Arizona judiciary for making holdings never in fact made, on issues never in fact presented to the Arizona Courts; and

B. Petitioner never effectively sought appellate review of the decisions of the trial court of which he complains.

TIAA-CREF is a large administrator of retirement funds for the education profession. Petitioner was apparently an educator who had significant investments held by TIAA-CREF. By way of background, this specific Respondent, TIAA-CREF, was not a party to the litigation when most of the matters complained of by Petitioner occurred. Specifically, TIAA-CREF's involvement in the litigation did not occur until *after* Pima County Superior Court entered the Decree of Dissolution on March 14, 1995. *See* Decree attached to Petition for Review as Appendix 9. The Decree of Dissolution of marriage provides, in relevant part, that:

> "6. Petitioner (Susan R. Chalker) is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:
>
> * * *
>
> G. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Retirement Annuities, certificate number J091114-7, Global Equities Account (approximate value $424,055.24).

I. TIAA Transfer Payout Annuity, contract number IE42653-2 (approximate value $36,654.54); . . . "

The Decree of Dissolution further indicated that, with regard to items G, H and I referenced above, " . . . all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order." It also states that "The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder." No Notice of Appeal was ever filed by Petitioner as to that Petition for Dissolution, nor did Petitioner file any motion to extend the time for such an appeal, if his "Rule 59-60" motions were in fact rejected as contended by Petitioner. A QDRO was entered by the Pima County Superior Court on July 28, 1995 ordering TIAA-CREF to transfer the above referenced accounts to Respondent Susan R. Chalker ("Chalker"). *See* QDRO attached hereto as Appendix 1.

Thereafter, on August 28, 1995, Chalker filed a Petition for Order to Show Cause to enforce those above referenced provisions of the Decree of Dissolution, and specifically requested from the Court an Order requiring TIAA-CREF to transfer the three retirement accounts to Chalker. The relevant pleadings are attached hereto as Appendix 2. On October 16, 1995, TIAA-CREF appeared in the litigation for the first time, and asked the Court to provide the additional time allowed under ERISA for

making a determination on such matters. *See* TIAA-CREF's Response to Petition for Order to Show Cause attached hereto as Appendix 3. Specifically, 26 U.S.C. § 414(p) allows a qualified plan such as TIAA-CREF an eighteen month period to analyze whether or not a valid QDRO has been issued which applies to the plan. The basis for TIAA-CREF's concern and the need for additional time was the fact that Petitioner had initiated attacks on the efficacy of the QDRO in at least two different federal courts. Subsequent to the Decree of Dissolution being entered on or about March 15, 1995, and prior to the entry of the QDRO on July 20, 1995, TIAA-CREF was named as a defendant in a lawsuit filed by Catz in the United States District Court for the Northern District of Ohio, Eastern Division, seeking to set aside the provisions of the Decree entered in the Arizona dissolution proceeding. *See* Complaint for Injunctive and Declaratory Relief attached to Appendix 3 as Exhibit A. In addition, TIAA-CREF was served with a copy of a Complaint naming TIAA-CREF as a defendant in the U. S. District Court for the Middle District of Tennessee. It was filed by Petitioner and again sought to set aside the Decree of Dissolution entered in Arizona upon which the QDRO was based. *See* Complaint and cover letter attached to Appendix 3 as Exhibit B. As can be seen from the cover letter, TIAA-CREF was advised that if title to the accounts in its possession was transferred to Respondent Chalker, TIAA-CREF would be sued for money damages. Having been placed in the proverbial spot between a rock and a hard place, TIAA-CREF felt that it must carefully evaluate its legal position to insure that no

precipitous actions were taken that could impact the rights of any other parties involved.

In any event, a hearing on the Order to Show Cause was set for October 20, 1995 in the Pima County Superior Courts. Chalker's Motion and TIAA-CREF's Opposition thereto all indicate that they were served upon Petitioner. Petitioner has never claimed otherwise, or that he was unaware of the scheduled hearing. Hearing was held as scheduled on October 20, 1995 and the matter was taken under advisement. *See* Minute Entry attached hereto as Appendix 4.

When the Tennessee Federal District Court action was dismissed on February 6, 1996, that fact was communicated to the Pima County Superior Court. *See* Respondent Chalker's Notice attached hereto as Appendix 5. Thereafter, the Pima County Superior Court entered an under advisement Order on October 16, 1995 ordering TIAA-CREF to transfer the aforementioned accounts to Chalker. *See* Order attached hereto as Appendix 6. A copy of that ruling was also sent to Petitioner, and he has never denied receiving it. This order constitutes a "special order made after final judgment" subject to immediate appeal under A.R.S. § 12-2101(C). Once again, 30 days passed after that Order was entered and no notice of appeal was filed. Once the time for appeal had expired, the transfer of assets compelled by the Pima County Superior Court in its order of February 13, 1996 was effectuated by TIAA-CREF. *See* document dated March 20, 1996 attached hereto as Appendix 7.

REASONS FOR DENYING THE WRIT

I.

THIS COURT HAS NO JURISDICTION TO CONSIDER PETITIONER'S ARGUMENTS.

This Court wisely refuses to review judgments rendered by the highest court of a state unless a federal question has been both raised and decided in the state court below. *Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992). (In reviewing judgments of state courts under 28 U.S.C. § 1257, the court will refuse to consider claims that were not raised or addressed below.) *See also Beck v. Washington*, 369 U.S. 541, 549-553 (1962) (because Petitioner failed to argue equal protection in state court, the question was not before this court); and *Herndon v. Georgia*, 295 U.S. 441, 443 (1935) (failure to follow appellate channels provided by state court is fatal).

The thrust of Petitioner's "federal questions" focuses on matters that occurred leading up to and perhaps resulting in the Decree of Dissolution entered on March 14, 1995. Petitioner was, however, unable to ever effectuate getting such issues heard by the Pima County Superior Court, and therefore these arguments have never been considered. In addition, these matters were never ruled upon by the Arizona Appellate Courts, because Petitioner failed to comply with Arizona procedural rules regarding appellate review of the rulings complained of.

Specifically, with regard to the entry of the Decree of Dissolution, that is an appealable order pursuant to A.R.S. § 12-2101, a fact which is undisputed by Petitioner. That being the case, since the Decree of Dissolution was

entered on March 14, 1995, the time for appeal would have run 30 days thereafter pursuant to Rule 9(a) of the Arizona Rules of Civil Appellate Procedure. Because no Notice of Appeal was filed, Catz forfeited his opportunity to obtain appellate relief. Although Catz claims that he filed a timely "Rule 59/60" motion with the trial courts which would have extended the time for appeal, and that such was returned to him for failure to comply with procedural requirements, such an argument is unavailing and unpersuasive for several reasons. For example, if the motion was indeed sent back for failure to comply with procedural rules, Petitioner, even as a pro se litigant, but especially as an attorney pro se litigant, has an obligation to know and understand such procedural rules. In addition, Petitioner made no attempt at the trial court level to resolve that timeliness issue, and there were numerous avenues available to him including: 1) filing a motion with the trial court to have the Rule 59/60 motion deemed filed when they were initially received by the Clerk of the Superior Court; or 2) filing a motion to set aside and reenter the Decree of Dissolution so that the time for appeal could be reestablished and a timely appeal perfected. Furthermore, if the Superior Court had been incorrect in rejecting the papers, Petitioner could have filed either a motion in Superior Court or sought appellate relief by way of special action to compel acceptance of the papers. By failing to do any of these things, Petitioner is stuck with the operation of the rules relating to effectuating appeals.

In fact, instead of taking any of these steps, Petitioner filed a Petition for Special Action to the Arizona Court of Appeals on March 31, 1996, more than a *year* after the

Decree for Dissolution was entered, and more than 11 months after the time for filing of a Notice of Appeal had expired. In Arizona, it is well established that a Special Action may not be taken to review an appealable order after the appeal time has run. *See State Ex Rel Neely v. Rodriguez*, 165 Ariz. 74, 77, 796 P.2d 876, 879 (1990). The Arizona Court of Appeals therefore lacked jurisdiction to entertain the Special Action, and properly came to that conclusion in declining such in its order of May 2, 1996.

The same is true of the only other order entered by the Pima County Superior Court that has any applicability to TIAA-CREF. Specifically, that is the Order of February 13, 1996 requiring TIAA-CREF to immediately transfer Petitioner's TIAA-CREF accounts and/or annuities to Susan Ruth Chalker. As previously indicated, that Order indicates it was mailed to Petitioner on February 13, 1996, and Petitioner does not deny receiving it. As a "special order made after final judgment" it is subject to immediate appeal under A.R.S. § 12-2101(C). Once again, 30 days passed after that Order was entered and no Notice of Appeal was filed. Accordingly, the Arizona Court of Appeals also lacked jurisdiction over the Special Action insofar as it related to that Order.

Thus, Petitioner did not obtain appellate review of orders complained of due to his failure to comply with established procedures and timelines. This failure to follow appellate channels provided by the Arizona state court system is fatal to Petitioner's Petition for Review. *Herndon v. Georgia*, 295 U.S. 441, 443 (1935).

Being a somewhat collateral party in this litigation, and essentially just a stake holder of contested assets,

TIAA-CREF lacks substantial knowledge, information or position with regard to the bulk of Petitioner's "facts" or arguments. It does not, however, appear that Petitioner is challenging the notice or appropriateness of the hearing on October 16, 1995, which resulted in the Order of February 13, 1996 requiring the transfer of the assets held by TIAA-CREF to Susan Ruth Chalker.

It should also be pointed out that with regard to TIAA-CREF, the transfer of assets compelled by the Pima County Superior Court in its Order of February 13, 1996 has occurred. *See* document dated March 20, 1996 attached hereto as Appendix 7. The transfer was effectuated by TIAA-CREF after the time for appealing the Order ordering such had expired. In any event, since the assets have been transferred, the doctrine of mootness would preclude any relief requested as to TIAA-CREF involving such assets. *See Miceli v. Industrial Commission*, 135 Ariz. 71, 659 P.2d 30 (1983).

Finally, it must also be noted that under Arizona's appellate review scheme, although there is no specific time limit for seeking special action review, special actions are governed by a laches standard. *See State Ex Rel Neely v. Rodriguez, supra.* Certainly the Arizona Court of Appeals could properly have concluded that seeking appellate relief from an appealable order more than a year after it was entered was well beyond the laches line.

II.

THE MAIN THRUST OF PETITIONER'S ARGUMENT IS BOTH SPURIOUS AND NOT OUTCOME DETERMINATIVE.

The Petition for Special Action that was presented to the Arizona appellate courts was largely indecipherable gibberish including such charges as "omnibus violations of Petitioner's fundamental rights." The Petition for Writ of Certiorari is slightly more focused and seems to be largely based upon the constitutionality of Arizona's practice of issuing temporary injunctions in divorce proceedings to prevent wasting, secreting, or otherwise mishandling the assets of the marital community pending the dissolution. There is a methodology in the statute itself for relief from such orders where appropriate, so clearly a participant in a dissolution proceeding has due process rights to a hearing to determine as to any given circumstance whether or not the injunction applies, whether an exception can be granted, or whether it should be dissolved. Certainly this satisfies procedural and substantive due process. Once again, what occurred here involves Petitioner's failure to effectively pursue and obtain a hearing on the issues. Indeed, had Petitioner been represented by counsel in Arizona, what we would be talking about would be a standard of care malpractice issue and not a procedural due process one. In short, it is obvious that Petitioner was more interested in pursuing wholly unfounded and spurious collateral proceedings in federal courts throughout the land than in obtaining a hearing on his issues in Arizona State Courts. In short, he was being too cute by half.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted this 27th day of March, 1997.

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APPENDIX 1

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Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	NO. D-103065
SUSAN RUTH CHALKER, Petitioner,	**QUALIFIED DOMESTIC RELATIONS ORDER**
and	
ROBERT STEVEN CATZ, Respondent, Additional Parties.	Assigned to: Judge McDonald
	(Filed Jul. 28, 1995)

1. This Court intends this order to be a Qualified Domestic Relations Order within the meaning of Section 414(p) of the Internal Revenue Code of 1986 ("Code").

2. Susan Ruth Chalker ("Chalker") and Robert Steven Catz ("Catz") were divorced pursuant to Decree of Dissolution of Marriage entered by this Court on March 14, 1995.

3. CATZ (Social Security Number 560-58-1390) is a participant in the Teachers Insurance and Annuity Association – College Retirement Equities Fund, hereinafter "TIAA-CREF", having the following Retirement Annuities:

A. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account;

B. CREF Supplemental Requirement Annuities, certificate number J091114-7, Global Equities Account;

C. TIAA Transfer Payout Annuity, contract number IE42653-2;

4. Catz' current and last known mailing address is:

Mr. Robert S. Catz
c/o Shawn D Catz
1402 – 17th Ave. #B
Nashville, TN 37212

5. Chalker's current and last known mailing address:

Susan Ruth Chalker
6374 N. Vuelta Tajo
Tucson, Arizona 85718

6. To accommodate the distribution of community property as ordered by this Court,

IT IS ORDERED, ADJUDICATED AND DECREED AS FOLLOWS:

A. That the TIAA-CREF annuities previously referenced are marital property;

B. That subject to the terms of said annuities, the following portions shall be awarded to Chalker as her sole separate, and exclusive property to be applied to TIAA-CREF annuities subject to the terms and limitations of said annuities:

The current values of:

. . .

100% of the accumulation under TIAA Transfer Payout Annuity, Contract No IE42653-2;

100% of the accumulation under CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account; and

100% of the accumulation under CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account

The current values will reflect interim interest and dividend earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF. All ownership rights in the newly issued annuities will belong to SUSAN R. CHALKER.

This Order:

A. does not require any Plan to provide any type of form of benefit, or any option, not otherwise provided under the Plan, and

B. does not require TIAA-CREF to provide increased benefits; and

C. does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

8. This Court reserves jurisdiction to issue further orders as needed to execute this order.

DONE this 28 day of July, 1995.

/s/ Joseph R. McDonald
Honorable Joseph R. McDonald
Pima County Superior Court

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attested 7-28 1995
JAMES N. CORBETT, Clerk

By /s/ Teresa R. Maylu Deputy

APPENDIX 2

ARIZONA SUPERIOR COURT, PIMA COUNTY

In re the Marriage of:	)	No. D-103065
SUSAN RUTH CHALKER	)	
Petitioner,	)	REQUEST FOR ORDER TO SHOW CAUSE HEARING DATE
and	)	
ROBERT STEVEN CATZ	)	
Respondent.	)	

It is hereby requested that the Order to Show Cause filed with the Clerk of Court contemporaneously herewith be set for hearing.

1. Type of Order to Show Cause:

   [ ] Pre-Judgment
   [X] Post-Judgment
   [ ] Provisional Remedy
   [ ] Supplemental Proceedings
   [ ] Other _____

2. Previous matters were heard by Judge/Commissioner Judge McDonald.

3. Estimated time for the ENTIRE hearing: **1 hour**

4. Court Reporter required [X] Yes [ ] No

5. Relief sought:

   [ ]Contempt
   [ ]Injunction
   [ ]Special Action

[ ]Appoint Receiver
[ ]Wage Assignment
[ ]Temporary Restraining Order
[ ]Modification
( )Decree, Support, etc.
( )Child Custody
[ ]Possession
[X] Other: **Turnover of Funds**

6. The opposing party is represented by Unknown.

[X] I hereby consent to the Order to Show Cause being heard by a Commissioner.

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PCC: 17238

Date: August 28, 1995

/s/ Annette Everlove
Attorney for Petitioner

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Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ; Respondent,	NO. D-103065 **PETITION FOR ORDER TO SHOW CAUSE** (Post-Decree)
WATERHOUSE SECURITIES, INC., a New York corporation; FIDELITY INVESTMENT TRUST, a registered security in the State of Arizona; FIDELITY SOUTHEAST ASIA FUND, a registered security in the State of Arizona; FIDELITY INVESTMENT TRUST FIDELITY LATIN AMERICA FUND, a registered security in the State of Arizona; TEACHERS INSURANCE AND ANNUITY ASSOCIATION/COLLEGE RETIREMENT EQUITIES FUND, a registered insurance/pension and/or annuity fund in the State of Arizona, Additional Parties.	Length of Hearing: 1 hour Assigned to: Judge McDonald

Petitioner, SUSAN RUTH CHALKER, by and through her undersigned counsel, for her Petition for Order to Show Cause, states as follows:

1. TIAA/CREF is an additional party to these proceedings pursuant to A.R.S. § 25-315.

2. A Decree of Dissolution of Marriage was entered by this Court on March 14, 1995.

3. Pursuant to said Decree of Dissolution of Marriage, Petitioner was awarded, *inter alia*, as her sole and separate property, all right, title and interest in and to the following TIAA/CREF accounts:

A. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account;

B. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account;

C. TIAA Transfer Payout Annuity, contract no. IE42653-2.

3. Pursuant to said Decree of Dissolution of Marriage, a Qualified Domestic Relations Order was entered by this Court on July 28, 1995 awarding to Petitioner as her sole, separate and exclusive property the above-referenced TIAA-CREF accounts.

4. TIAA/CREF was provided with copies of the Decree of Dissolution of Marriage and Qualified Domestic Relations Order on or about March 15, 1995 and July 28, 1995 and yet to date, and despite demand, has failed and refused and continues to fail and refuse to transfer the above-referenced TIAA-CREF accounts to Petitioner.

WHEREFORE, Petitioner requests that this Court issue its order requiring TIAA/CREF to appear and show cause, if any it has, why this Court should not:

A. Order the immediate transfer of the above-referenced TIAA/CREF accounts to Petitioner;

B. Award to Petitioner her attorneys' fees and costs incurring in bringing the instant Petition for Order to Show Cause; and

C. For such other relief as the Court deems proper.

DATED this 28th day of August, 1995.

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove
Attorneys for Petitioner

COPY of the foregoing
mailed this 29th day of
August, 1995 to:

TIAA/CREF
ATTN: John Curran, Esq.
730 Third Avenue
New York, New York 10017-3206
Additional Party

Mr. Robert S. Catz
c/o Shawn D Catz
1402 – 17th Ave. #B
Nashville, TN 37212
Respondent

STATE OF ARIZONA)
) ss:
County of Pima)

ANNETTE EVERLOVE, being first duly sworn upon her oath deposes and says:

1. That she is co-counsel for the Petitioner in the above-entitled action;

2. That as such, she is familiar with the facts in this action;

3. That she has read the foregoing Petition for Order to Show Cause and knows the contents thereof;

4. That the contents of the Petition are true to the best of her knowledge, except as to those items stated on information and belief, and as to those she believes them to be true.

/s/ Annette Everlove
ANNETTE EVERLOVE

SUBSCRIBED AND SWORN to before me this 28th day of August, 1995 by ANNETTE EVERLOVE.

(Seal)

/s/ Susan M. Holsten
Notary Public

My Commission Expires:
9-29-98

(Seal) *OFFICIAL SEAL*
SUSAN M. HOLSTEN
NOTARY PUBLIC – ARIZONA
PIMA COUNTY
My Comm. Expires Sept. 29, 1998

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Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	)
SUSAN RUTH CHALKER,	)
Petitioner,	) NO. D-103065
and	) ORDER TO
ROBERT STEVEN CATZ;	) SHOW CAUSE
Respondent,	)

WATERHOUSE SECURITIES, INC., a New York corporation; FIDELITY INVESTMENT TRUST, a registered security in the State of Arizona; FIDELITY SOUTHEAST ASIA FUND, a registered security in the State of Arizona; FIDELITY INVESTMENT TRUST FIDELITY LATIN AMERICA FUND, a registered security in the State of Arizona; TEACHERS INSURANCE AND ANNUITY ASSOCIATION/COLLEGE RETIREMENT EQUITIES FUND, a registered insurance/pension and/or annuity fund in the State of Arizona, Additional Parties.	Length of Hearing: 1 hour Assigned to: Judge McDonald

Petitioner, having filed her Petition for Order to Show Cause for Temporary Orders, and good cause appearing,

IT IS ORDERED that Additional Party TEACHERS INSURANCE AND ANNUITY ASSOCIATION/COLLEGE RETIREMENT EQUITIES FUND (TIAA/CREF) appear before this Court at 110 West Congress, Tucson, Arizona, on the 16 day of Oct. 1995, at the hour of 2:30 o'clock p.m., and show cause, if any they have, why the Court should not:

A. Order the immediate transfer of the above-referenced TIAA/CREF accounts to Petitioner;

B. Award to Petitioner her attorneys' fees and costs incurring in bringing the instant Petition for Order to Show Cause; and

C. For such other relief as the Court deems proper.

DONE IN OPEN COURT this 29 day of Aug 1995.

/s/ _____
Honorable Joseph R. McDonald
Pima County Superior Court

APPENDIX 3

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent.	NO. D-103065 RESPONSE TO PETITION FOR ORDER TO SHOW CAUSE (Assigned to Commissioner Joseph R. McDonald)
WATERHOUSE SECURITIES, INC., a New York corporation; FIDELITY INVESTMENT TRUST, a registered security in the State of Arizona; FIDELITY SOUTHEAST ASIA FUND, a registered security in the State of Arizona; FIDELITY INVESTMENT TRUST FIDELITY LATIN AMERICA FUND, a registered security in the State of	

Arizona; TEACHERS INSURANCE AND ANNUITY ASSOCIATION/ COLLEGE RETIREMENT EQUITIES FUND, a registered insurance/ pension and/or annuity fund in the State of Arizona,	)
Additional Parties.	)

Teachers Insurance and Annuity Association/College Retirement Equities Fund ("TIAA/CREF") hereby submits the following response to the Petitioner's Petition for Order to Show Cause filed in this matter. This Response is based on the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner has obtained a Qualified Domestic Relations Order ("QDRO") pursuant to a Decree of Dissolution of Marriage entered in this matter, which awards 100% of Robert S. Catz's ("Catz") retirement annuity contract accumulations with TIAA/CREF. This is apparently the second divorce for this couple, the first being set aside in the current proceeding.

Catz, however, has initiated attacks on the efficacy of the QDRO. Subsequent to the Decree of Dissolution entered on or about March 15, 1995 and prior to the QDRO being entered on July 20, 1995, TIAA/CREF was named as a Defendant in a lawsuit filed by Catz in the United States District Court for the Northern District of Ohio, Eastern Division, seeking to set aside the provisions of the Decree entered in this action. *See* Complaint

for Injunctive and Declaratory Relief attached hereto as Exhibit A.

Most recently, TIAA/CREF was served with a copy of the Complaint naming it as a Defendant in the U.S. District Court for the Middle District of Tennessee. It was filed by Catz and again seeks to set aside the Decree of Dissolution in the current action upon which the purported QDRO is based. *See* Complaint and cover letter attached hereto as Exhibit B. As can be seen from the cover letter, TIAA/CREF is advised that if title to the accounts in its possession is transferred to Petitioner herein, it will be sued for money damages. Having been placed in the proverbial spot between a rock and a hard place, TIAA/CREF must carefully evaluate its legal position to insure that no precipitous actions are taken that could impact the rights of any of the parties involved.

Under ERISA, and specifically 26 U.S.C. §414(p), a copy of which is attached hereto for the Court's convenience, a qualified plan such as TIAA/CREF is allowed an eighteen month period to analyze whether or not a valid QDRO has been issued which applies to the plan. In the interim period, the Act provides that the plan shall segregate the accounts subject to the QDRO. In the instant case, that is not a problem since the QDRO at issue covers Catz's entire annuity contract accumulations in existence at the time.

Thus, the relief requested in the Order to Show Cause is contrary to specific ERISA legislation on the subject insofar as it would require TIAA/CREF to honor the QDRO and disseminate funds [prior to the expiration of the eighteen month period]. Thus, rather than being forced to move precipitously and jeopardize the rights of

either party to the contract accumulations until such time as the participant's claims are fully adjudicated, or it is determined that they are without merit, TIAA/CREF requires sufficient time to resolve this matter. Since the QDRO submitted by Petitioner was issued just this past July, TIAA/CREF still has a substantial amount remaining of this eighteen month period during which a final determination can be reached as to the QDRO's qualifications.

Dated this 16th day of October, 1995.

RUSING & LOPEZ, P.L.L.C.

By /s/ MJR
Michael J. Rusing
Attorneys for Teachers Insurance and Annuity Association/College Retirement Equities Fund

Served by mail this 16th day of October, 1995, upon:

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 S. Church Ave., Ste. 9300
Tucson, AZ 85701
Attorneys for Petitioner

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 No. Stone Ave., Ste. 2120
Tucson, AZ 85701
Attorneys for Petitioner

Robert S. Catz
c/o Shawn D. Catz
1402 Seventeenth Ave., #B
Nashville, TN 37212
Respondent

/s/ Pat Greenwood

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT S. CATZ,
1402 17th Avenue South #B
Nashville, TN 37212,

PLAINTIFF,

vs.

SUSAN R. CHALKER,
6274 Vuelta Tajo
Tucson, AZ 85718

FIDELITY INVESTMENTS,
164 North Northern Avenue
Boston, MA 02210

WATERHOUSE SECURITIES,
100 Wall Street
New York, NY 10005

TEACHERS INSURANCE
ANNUITY ASSOCIATION/
COLLEGE RETIREMENT
EQUITY FUND,
730 Third Avenue
New York, NY 10017

OHIO STATE TEACHERS
RETIREMENT SYSTEM
275 Broad Street
Columbus, OH 43215

DEFENDANTS.

CA No.
1:95CV 1652

JUDGE
MANOS

MAG. JUDGE
HEMANN

(Filed
Jul. 27, 1995)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTORY STATEMENT

1. This action arises under 28 U.S.C. §1738 seeking final injunctive and declaratory relief as to which of two final and conflicting state court judgments is entitled to full faith and credit under Article IV §1 of the United States Constitution.

II. JURISDICTION

2. This Court has subject matter jurisdiction under 28 U.S.C. §1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds $50,000 exclusive of interests and costs.

III. PARTIES

3. The plaintiff Robert S. Catz is an adult resident of the State of Tennessee.

4. The defendant Susan R. Chalker is an adult resident of the State of Arizona.

5. The defendant Fidelity Investments of Massachusetts is a financial services company authorized to sell securities and other investment instruments in the State of Ohio.

6. The defendant Waterhouse Securities of New York is a financial services company authorized to sell securities and other investment instruments in the State of Ohio.

7. The defendant Teachers Insurance Annuity Association/College Retirement Equity Fund of New York is a

financial services company authorized to sell securities and other investment instruments in the State of Ohio.

8. The defendant Ohio State Teachers Retirement System of Columbus was created by the Ohio legislature to provide retirement and other related benefits and services to Ohio's public school and state university employees.

IV. FACTUAL ALLEGATIONS

9. On April 13, 1980 the plaintiff Robert S. Catz and defendant Susan R. Chalker were married in Washington, D.C.

10. On April 10, 1989 the plaintiff Robert S. Catz and defendant Susan R. Chalker were divorced by final decree entered by the Cuyahoga County Court of Common Pleas in *Catz v. Catz*, No. D191073 a copy of said final judgment is attached hereto.

11. On November 4, 1994 defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065 collaterally attacking the validity of the 1989 Ohio judgment.

12. On March 14, 1995 the Pima County Superior Court entered a final judgment in Chalker v. Catz granting defendant Chalker a dissolution of marriage by default judgment on grounds that the 1989 Ohio judgment was not entitled to full faith and credit under Article IV §1 of the United States Constitution as it was procured by fraud and ordered among other things the transfer of property held in the name of plaintiff Robert S. Catz on

account with defendants Fidelity Investments, Waterhouse Securities, Teachers Insurance Annuity Association/College Retirement Equity Fund and the Ohio State Teachers Retirement System to defendant Chalker a copy of which is attached hereto.

V. CLAIMS FOR RELIEF

13. The Arizona state court judgment was entered in violation of 28 U.S.C. §1738 and Article IV § of the Untied States Constitution and is therefore invalid.

14. The Arizona state court judgment was entered in violation of the due process clause of the fourteenth amendment of the United States Constitution as plaintiff Catz was denied a full and fair opportunity to present his claims before the Arizona state court in *Chalker v. Catz* and is therefore invalid.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that the Court grant the following relief:

1. Issue a declaratory judgment that the Arizona state court judgment is invalid under 28 U.S.C. §1738, Article IV §1 and the fourteenth amendment of the United States Constitution.

2. Issue a permanent injunction enjoining defendant Chalker from initiating any further litigation collaterally attacking the Ohio judgment on grounds that said judgment is constitutionally valid and therefore entitled to complete and full preclusive effect under Ohio law as to

all issues and claims adjudicated by the Ohio court in 1989.

Respectfully submitted,

/s/ Robert S. Catz
ROBERT S. CATZ
1402 17th Avenue South # B
Nashville, Tennessee 37212
(615) 780-3594

PLAINTIFF APPEARING
PRO SE

EXHIBIT B

RAY & HOUSCH
ATTORNEYS AT LAW

CHARLES R. RAY*
PAUL T. HOUSCH
JULIE E. OFFICER

*Also Licensed in Kentucky

TWO HUNDRED ELEVEN
THIRD AVENUE NORTH
P.O. BOX 198288
NASHVILLE, TENNESSEE 37219
TELEPHONE (615) 256-2111
FAX (615) 248-6730

October 2, 1995

VIA OVERNIGHT MAIL

Mr. John Curran, Esq.
Legal Department
TIAA/CREF
730 Third Avenue
New York, NY 10017

Re: Catz v. TIAA-CREF
(M.D. Tenn., filed 10/2/95)

Dear Mr. Curran:

Enclosed please find a copy of a complaint filed this date naming TIAA-CREF as a defendant. Please be advised that your registered agent was served this date. As you know, the plaintiff, Robert S. Catz, a resident of Nashville, Tennessee, and Susan R. Chalker, a resident of Tucson, Arizona, are two adverse claimants asserting a legal right over TIAA-CREF, Account Nos. Q866023-8, J091114-7, and IE42653-2, titled in the name of the plaintiff, Robert S. Catz. Ms. Chalker makes claim of these accounts pursuant a March 14, 1995 Arizona state court judgment which is invalid under the due process clause of the Fourteenth Amendment had not entitled to full faith and credit under Article IV § 1 of the U.S. Constitution.

We strongly suggest that you file a cross-complaint in the nature of an interpleader pursuant to 28 U.S.C. § 1335 and join Ms. Chalker as a co-cross defendant, pursuant to Rule 18 of the Federal Rules of Civil Procedure. This is to put you on notice that if TIAA-CREF fails to avail itself of the remedy of interpleader in this controversy and instead chooses to transfer title of the disputed accounts to Ms. Chalker, we will amend the complaint to add a claim for damages against TIAA-CREF.

We look forward to hearing from you.

Very truly yours,

RAY & HOUSCH

/s/ Charles R. Ray
Charles R. Ray

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ,
JASON A. CATZ
ROBERT S. CATZ
1402 – 17th Avenue South, No. B
Nashville, Tennessee 37212,

Plaintiffs,

vs.

SUSAN R. CHALKER,
6374 Vuelta Tajo
Tucson, Arizona 85718

FIDELITY INVESTMENTS,
164 North Northern Avenue
Boston, Massachusetts 02210

WATERHOUSE SECURITIES,
100 Wall Street
New York, NY 10005

TIAA-CREF
730 Third Avenue
New York, NY 10017

DEFENDANTS.

No. 3-95-0947

JUDGE ECHOLS

(Filed Oct. 2, 1995)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now come the Plaintiffs and complain as follows:

I.

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as the claims presented herein arise under the due process clause of the Fourteenth Amendment to the United States Constitution, under 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds Fifty Thousand Dollars ($50,000), exclusive of interest and costs.

II.

THE PARTIES

2. Plaintiff, Shawn D. Catz, is an adult resident of the State of Tennessee.

3. Plaintiff, Jason A. Catz, is an adult resident of the State of Tennessee.

4. Plaintiff, Robert S. Catz, is an adult resident of the State of Tennessee.

5. Defendant, Susan R. Chalker, is an adult resident of the State of Tennessee.

6. Defendant, Fidelity Investments of the State of Massachusetts is a financial services company authorized to sell securities in the State of Tennessee.

7. Defendant, Waterhouse Securities, of the State of New York is a financial services company authorized to sell securities in the States of Tennessee.

8. Defendant, Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

III.

FACTUAL ALLEGATIONS

9. On April 13, 1980, Plaintiff, Robert S. Catz, and Defendant, Susan R. Chalker, were married in Washington, D.C.

10. On April 10, 1989, Plaintiff, Robert S. Catz, and Defendant, Susan R. Chalker, were divorced by final decree entered by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, in *Catz v. Catz*, No. D191073. *See*, Exhibit "A" attached hereto (Ohio divorce decree).

11. On November 4, 1994, Defendant, Susan R. Chalker, filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065, collaterally attacking the validity of the Ohio judgment.

12. On December 1, 1994, the Pima County Superior Court issued an *ex parte* temporary restraining order enjoining Defendant financial institutions from the payment, withdrawal, and/or disbursement of accounts in its custody and possession and titled in the name of the Plaintiffs. *See*, Exhibit "B" attached hereto (Temporary Restraining Order).

13. On March 14, 1995, the Pima County Superior Court entered a final decree and judgment in *Chalker v.*

Catz, granting Defendant Chalker a dissolution of marriage by default and invalidated the 1989 Ohio state court judgment upon a finding by the Arizona court that it was not entitled to a full faith and credit under Article IV § 1 of the United States Constitution. The Arizona decree further ordered *inter alia* the transfer of all accounts in the custody and possession of Defendant financial institutions and titled in the name of the Plaintiffs. *See*, Exhibit "C" attached hereto (Arizona divorce decree).

14. The manner in which the Arizona state court proceeding was conducted, resulting in a coerced and involuntary entry of the final decree of dissolution by default, deprived the Plaintiffs of a full and fair opportunity to be heard on all claims adjudicated on March 14, 1995, and resulted in the taking and transfer of accounts in the custody and possession of Defendant financial institutions and titled in the name of the Plaintiffs by denying them an opportunity to be heard. Furthermore, Plaintiffs, Shawn D. Catz and Jason A. Catz, were never named or joined as parties in the Arizona proceeding, served with a summons and complaint, a temporary restraining order, or the final judgment awarding assets titled to them to Defendant Chalker.

IV.

CLAIM FOR RELIEF

DECLARATORY JUDGMENT 28 U.S.C. § 2201

15. Plaintiffs hereby incorporate all paragraphs herein as though fully set forth at length.

16. Plaintiffs' claims are controversies between the parties over which this Court has subject matter, personal, and *in rem* jurisdiction.

17. The Arizona state court judgment was entered in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

(a) Issue a final declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Arizona state court judgment is invalid under 28 U.S.C. § 1738, Article IV, § 1 of the United States Constitution, and the due process clause of the Fourteenth Amendment to the United States Constitution, and issue corresponding final injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure permanently enjoining Defendant financial institutions from transferring accounts in their custody and possession and titled in the name of the Plaintiffs.

(b) Award the Plaintiffs their costs and fees herein.

Respectfully submitted,

RAY & HOUSCH

By: /s/ Charles R. Ray

CHARLES R. RAY (#3188)
211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219
(615) 256-2111

Attorney for Plaintiffs

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

ROBERT S. CATZ, Plaintiff	)	CASE NUMBER: D 191073
	)	JUDGE STANLEY M. FISHER
vs.	)	JUDGMENT ENTRY
SUSAN R. CATZ, Defendant	)	

This case came on for Trial on April 18, 1989 before the Honorable Stanley M. Fisher. The hearing was conducted upon the Complaint for Divorce of the Plaintiff, the Defendant being in default of answer. Both parties were duly served with process according to law. Plaintiff presented evidence, corroborated by a witness, relative to the averments contained in his Complaint for Divorce.

Upon due consideration of the Complaint for Divorce and the evidence presented at the time of the Trial, this Honorable Court finds that: Plaintiff was a resident of Cuyahoga County Ohio, for a continuous period in excess of six (6) months immediately preceding the filing of his Complaint for Divorce the parties were married as alleged in Washington, D.C. on April 13, 1980; and, one (1) child was born as issue of the marriage, namely Aaron Catz, age eight (8).

This Honorable Court further finds that Plaintiff and Defendant have lived separate and apart without cohabitation for a period of time in excess of one (1) year, thereby entitling Plaintiff as to an absolute divorce.

This Honorable Court further finds that: the parties did not own real property in the State of Ohio which constitutes marital assets; the parties have not established any joint residence in the State of Ohio; the parties have not intermingled personal, tangible and/or intangible property since the time of their marriage; Plaintiff has taken possession of only his personal property located in the State of Ohio, which consists of clothing, toiletries, books, files and other supplies that are inherent in the practice of his profession; and, Defendant has in her possession her personal property.

This Honorable Court further finds that: according to Ohio Revised Code Section 3109.23, this Court does not have jurisdiction to determine custody and visitation rights regarding the child of this marriage because the child has no significant connection with the State of Ohio and has been residing with his mother in the State of Florida, thereby creating jurisdiction in the State of Florida; this Court is not the proper forum to determine matters of child support because the appearance of the defaulting Defendant is necessary to the just adjudication of the issue; and, the forum state exercising jurisdiction over the child of this marriage should apply its own substantive law related to support.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff is hereby granted a divorce from Defendant and the marriage contract heretofore existing between the parties is hereby dissolved and set aside;

2. Neither party is entitled to alimony;

3. Plaintiff shall retain possession of and have sole and exclusive rights to his personal property located in the State of Ohio;

4. Defendant shall retain possession of and have sole and exclusive rights to her personal property which is presently in her possession; and,

5. Plaintiff shall pay the costs of this proceeding for which judgment is rendered and execution may issue.

/s/ Stanley M. Fisher
JUDGE STANLEY M. FISHER

EXHIBIT "B"

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard I. Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Avenue
Suite 1800
Tucson, Arizona 85701-1415
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, et al. Respondent.	NO. D-103065 **TEMPORARY RESTRAINING ORDER WITHOUT NOTICE** (Filed Dec. 1, 1994)

It clearly appearing from the specific facts shown by Petitioner's verified Amended Petition for Dissolution and the affidavits submitted in support of Petitioner's Application for Temporary Restraining Order on file in this proceeding that immediate and irreparable injury will result to the moving party if no order is issued before the time for responding has elapsed and before the adverse party or his attorneys can be heard in opposition. One of the applicant's attorney having certified to the Court in writing the reasons supporting the claim that notice should not be required and it appearing to the Court that the injury defined is irreparable because absent a temporary restraining order prohibiting the payment, withdrawal or disbursement of funds, stocks or other property from: who has been added as an additional party, Respondent will remove assets belonging to the community or in which the community has an interest from the Court's jurisdiction, or take other action violative of A.R.S. § 25-315.

IT IS THEREFORE ORDERED that, is enjoined from the payment, withdrawal and/or disbursement, in any manner whatsoever, of any funds, stocks, bonds, notes or other property which it has in its possession and/or control and titled in the names of ROBERT STEVEN CATZ, DOB: SSN: SUSAN RUTH CHALKER, DOB: SSN: , and/or Respondent's children, SHAWN DAVID CATZ (DOB: SSN:); and/or JASON ALAN CATZ (DOB:), SSN:); and/or AARON MICHAEL CATZ (DOB: SSN:);

IT IS FURTHER ORDERED that this Order be filed forthwith in the office of the Clerk of the Superior Court and entered of record and that the moving party serve a copy of this Temporary Restraining Order, the First Amended Petition for Dissolution of Marriage, the Ex Parte Motion to Add Parties and for Issuance of Temporary Restraining Order Without Notice, and the supporting affidavits forthwith upon any party to whom this order is directed and upon any other party or attorney who has appeared in this action in accordance with Rule 5, Arizona Rules of Civil Procedure.

This Order shall issue without bond and shall continue in force and effect until further order of the Court.

DATED this 1 day of Dec., 1994.

/s/ MICHAEL D. ALFRED
Judge
Pima County Superior Court

EXHIBIT "C"

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Ave.
Suite 1800
Tucson, Arizona 85701
(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent, Additional Parties.	NO. D-103065 DECREE OF DISSOLUTION OF MARRIAGE Assigned to: Judge McDonald (Filed Mar. 14, 1995)

This matter coming on regularly to be heard before the Court on March 14, 1995, and Petitioner being present in person and through her attorneys, Annette Everlove and Leonard Karp; the Respondent not appearing; this Court having acquired jurisdiction over the Respondent on December 14, 1994 by personal service upon him of the Amended Petition for Dissolution, Summons, Preliminary Injunction, and other pleadings, all as set forth in that certain Affidavit of Return of Service dated December 15, 1994; Respondent not having responded to Petitioner's Request for Production of Documents served upon him on December 14, 1994; Respondent not having answered Uniform Domestic Relations Interrogatories served upon him on December 14, 1994; Respondent failing to attend his deposition duces tecum scheduled for February 9, 1995; Respondent failing to obey this Court's Minute Entry Order dated February 6, 1995, and having been found in contempt of Court, all as set forth in this Court's Minute Entry Order dated March 2, 1995, and default against Respondent having been entered and evidence having been presented and considered, the Court finds as follows:

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

2. Any judgment on the divorce purportedly heretofore obtained by Respondent against Petitioner in the State of Ohio, County of Cuyahoga, is null and void having been fraudulently obtained and further this Court shall not give full faith and credit to said judgment.

3. The conciliation provisions of A.R.S. § 25-381, as amended, either do not apply or have been met.

4. The marriage of the parties is irretrievably broken with no reasonable prospect of reconciliation.

5. There is one minor child the issue of this marriage, to wit: Aaron Michael Catz, date of birth October 15, 1980.

6. To the extent it has jurisdiction to do so, this Court has considered, approved and made provision for the custody and support of the parties' minor child, maintenance and support of the parties, division of community and other joint or common debts, obligations and property of the parties.

7. Petitioner shall have sole legal and physical custody of the parties' minor child with such visitation in Respondent as Petitioner, in her sole discretion, deems appropriate.

8. Respondent has been employed as a professor of law from 1979 until approximately 1993, first at Cleveland Marshall School of Law and later at District of Columbia School of Law, and the Court attributes income to him based upon income earning ability of $73,000.00 per annum.

9. Petitioner shall be entitled to an award of child support pursuant to Arizona Child Support Guidelines as set forth in the Child Support Order and Order of Assignment submitted herewith and signed by the Court this date. Said child support award shall be effective January 1, 1995 with no offset Respondent for any sums paid to date.

10. Petitioner satisfies the statutory requirements of A.R.S. § 25-319(A) and is in need of, and entitled to, an award of spousal maintenance, in that Petitioner lacks sufficient property, including property awarded herein, to provide for her reasonable needs and has, at Respondent's urging, become a contract elementary school teacher with no tenure, nor tenure possibility with her present employer.

11. During the pendency of these proceedings, Petitioner sustained an insurable loss on her automobile in the sum of $4,800.00 which Respondent's conduct has precluded Petitioner from collecting.

12. Respondent has secreted, dissipated and/or otherwise failed to account for substantial community funds and assets.

13. The terms of this Decree and fair and equitable given the Court's finding of Respondent's dissipation, secreting and/or failure to account for marital assets.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The marriage previously existing between the parties is dissolved.

2. Petitioner shall have sole legal and physical custody of the parties' minor child, Aaron Michael Catz, with such visitation in Respondent as Petitioner, in her sole discretion deems appropriate.

3. Respondent shall pay to Petitioner as and for child support the sum of $700.00 per month commencing January 1, 1995 pursuant to the Child Support Order signed this date.

4. Petitioner shall be entitled to claim Aaron as a dependent for income tax purposes for tax year 1994 and all years subsequent thereto.

5. Respondent shall pay to Petitioner as and for spousal maintenance the sum of $1,000.00 per month commencing January 1, 1995.

6. Petitioner is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:

A. Fidelity Latin American Fund (7,926.390 shares valued at $92,659.49 as of January 17, 1995);

B. Fidelity Southeast Asia Fund (15,644.564 shares valued at $186,639.64 as of January 17, 1995);

C. Fidelity U.S. Government Reserves (balance unknown);

D. Waterhouse Securities, Inc., account no. 301-10632 (approximate value as of February 22, 1995 – $120.00);

E. Waterhouse Securities, Inc., IRA-SEP account No. 301-10633 (approximate value as of February 22, 1995 - $1,410.00);

F. Waterhouse Securities, Inc., IRA account no. 301-10634 (approximate value as of February 22, 1995 - $13,529.00);

G. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account (approximate value $424,055.24);

I. TIAA Transfer Payout Annuity, contract no. IE42653-2 (approximate value $36,654.54);

J. Petitioner's State of Arizona Retirement (approximate value $ 230.00);

K. Petitioner's automobile 1989 Honda Accord;

L. All personal property in Petitioner's possession;

M. All bank accounts standing in Petitioner's name;

N. All bank accounts standing in Aaron's name.

7. As to those items set forth in ¶ 6 (G), (H) and (I) above, all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order. The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder.

8. Respondent is awarded all right, title and interest in and to his pension and/or retirement plan through the State of Ohio, current balance unknown.

9. The Court retains jurisdiction pursuant to A.R.S. § 25-318(B) to divide additional marital property which remains unknown by Petitioner and undisclosed by Respondent.

10. Respondent shall pay and hold Petitioner harmless from all debts of any kind or nature incurred by the

parties during marriage, including all tax liability, whether incurred in his name, Petitioner's name or both names except for the following;

A. loan from Bernice Mennis to Susan Chalker in the principal sum of $7,300.00;

B. those certain credit card debts set forth in Petitioner's spousal affidavit dated November 4, 1994.

11. Judgment is entered in favor of Petitioner and against the Respondent in the sum of $4,800.00 as and for the insurable loss on her automobile, which Respondent's conduct has precluded her from collecting.

12. Judgment is hereby entered in favor of Petitioner and against the Respondent for child support and spousal maintenance accrued from January 1 to March 1, 1995 in the sum of $3,000.00.

13. Petitioner is entitled to payment of her attorneys' fees and costs incurred in this matter and judgment thereon shall be entered by this Court by separate judgment or order upon filing by counsel for Petitioner of appropriate affidavits pursuant to *China Doll Restaurant Inc. v. Schweiger.*

14. Interest shall run on all monies adjudged to be owing Petitioner from Respondent at the legal rate of interest from entry of judgment until paid in full.

DONE IN OPEN COURT this 14 day of March, 1995, at 10 A.M.

/s/ Joseph R. McDonald
Honorable Joseph R. McDonald
Pima County Superior Court

STATE OF ARIZONA) ss.
COUNTY OF PIMA)

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attested MAR 14 1995
JAMES N. CORRETT, Clerk

By /s/ Ruben R. Suares
Deputy
Ruben R. Suares

APPENDIX 4

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE PROTEM:
HON. JOSEPH R. MCDONALD CASE NO. **D - 103065**

COURT REPORTER:
Gladys Johnson DATE: October 20, 1995

IN RE THE MARRIAGE OF:

SUSAN RUTH CHALKER
Petitioner

and

ROBERT STEVEN CATZ
Respondent

Annette Everlove and
Leonard Karp
Petitioner's
Attorneys

Michael Rusing for
TIAA/CREF

MINUTE ENTRY

PETITIONER'S OSC:

Petitioner is present; respondent is not present.

Ms. Everlove argues her motion to the Court.

Mr. Rusing objects and argues to the Court. Further, Mr. Rusing argues against petitioner's request for attorney's fees.

This matter is taken UNDER ADVISEMENT.

cc: Hon. Joseph R. McDonald
Domestic Calendaring
Annette Everlove, Atty
Michael Rusing, Esq.
Under Advisement Clerk

Beth Hoover
Deputy Clerk

APPENDIX 5

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Ave.
Suite 1800
Tucson, Arizona 85701
(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	NO. D-103065
SUSAN RUTH CHALKER, Petitioner,	NOTICE OF ENTRY OF DISMISSAL
and	
ROBERT STEVEN CATZ, Respondent, Additional Parties.	Assigned to: Judge McDonald

Petitioner, SUSAN RUTH CHALKER, hereby advises the Court that that certain action pending in the United States District Court for the Middle District of Tennessee, Nashville Division, Cause No. 3:95-0947, in which Robert Steven Catz, et al. are Plaintiffs and Susan Ruth Chalker, et al. are Defendants, has been dismissed by Order of the Court, the Honorable Robert L. Echols, entered February 7, 1996, a true and correct copy of said Order is attached hereto, in addition to the dismissal of the Complaint in the above-described United States District Court action, all other requests for relief by the Plaintiffs in the Tennessee action have likewise been dismissed.

Petitioner SUSAN RUTH CHALKER therefore requests that this Court rule on her Petition on Order to Show Cause filed on August 29, 1995 and taken under advisement following hearing on October 16, 1996.

RESPECTFULLY SUBMITTED this 9th day of February, 1996.

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove
Attorneys for Petitioner

COPY of the foregoing
mailed this 9th day of
February, 1996 to:

Tom Slutes, Esq.
SLUTES, SAKRISON, EVEN, GRANT
& PELANDER, P.C.
33 N. Stone Ave. #1100
Tucson, Arizona 85701-1489
Attorneys for Additional Party FIDELITY

Michael J. Rusing, Esq.
RUSING & LOPEZ, P.L.L.C.
6262 N. Swan Road, 2nd Floor
Tucson, Arizona 85718-0000
Attorneys for Additional Party TIAA/CREF

Mr. Robert S. Catz
c/o Shawn D Catz
1402 - 17th Ave. #B
Nashville, TN 37212
Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al.,	)	
	)	
Plaintiffs,	)	No. 3-95-0947
v.	)	JUDGE ECHOLS
SUSAN R. CHALKER, et al.,	)	
	)	
Defendants.	)	

ORDER

Presently pending before the Court is Defendant Susan Chalker's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Lack of Personal Jurisdiction (Docket Entry No. 14), to which Plaintiffs have responded in opposition. For the reasons outlined in the Memorandum contemporaneously entered herewith, Defendant's Motion to Dismiss is hereby GRANTED. Also pending

are Plaintiffs' Motion for Preliminary Injunction (Docket Entry No. 3) and Plaintiffs' Motion Requesting Interpleader Fidelity to Deposit Bond in Registry of Court in Lieu of Cash Deposit (Docket Entry No. 17). The Court held a hearing on Plaintiff's Motions for Preliminary Injunction and Interpleader action for over two days. The Court's decision on the Motions for Preliminary Injunction and Interpleader was reserved until its consideration of Defendant's Motion challenging the jurisdiction of the Court. All of these motions were discussed in some fashion at the hearing. Plaintiff also has filed a Motion for Oral Argument on Defendant's Motion to Dismiss (Docket Entry No. 35) and Defendant has filed a Motion to Dismiss Plaintiff's Amended Complaint (Docket Entry No. 43). By virtue of the Court's ruling on Defendant's Motion to Dismiss for lack of subject matter jurisdiction, these Motions are hereby DENIED as MOOT.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES
DISTRICT JUDGE

APPENDIX 6

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and

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(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent, Additional Parties.	NO. D-103065 **ORDER** Assigned to: Judge McDonald

This matter having come before the Court of Petitioner Susan R. Chalker's Petition for Order to Show Cause against TIAA/CREF with hearing thereon held on October 16, 1995; and this matter having been stayed by

the United States District Court for the Middle District of Tennessee, Nashville Division, Cause No. 3:95-0947, on or about October 19, 1995; and said Tennessee matter having been dismissed in its entirety by order dated February 7, 1996, the Honorable Robert L. Echols; and good cause appearing, the Court finds as follows:

1. That all right, title and interest in the TIAA/CREF accounts listed below was ordered to be transferred to SUSAN RUTH CHALKER pursuant to the Decree of Dissolution of Marriage entered by this Court on March 14, 1995:

a. CREF Retirement Annuity, Certificate No. Q866023-8, Global Equities Account;

b. CREF Supplemental Retirement Annuities, Certificate No. J091114-7, Global Equities Account;

c. TIAA Transfer Payout Annuity, Contract No. IE42653-2.

2. That pursuant to said Decree of Dissolution of Marriage, a Qualified Domestic Relations Order was entered by this Court on July 28, 1995, awarding to Petitioner as her sole, separate and exclusive property the above-referenced TIAA-CREF accounts.

3. That to date, these accounts have not been transferred.

4. That no good cause exists for the failure to transfer said accounts and/or annuities.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That TIAA/CREF honor the Qualified Domestic Relations Order entered by this Court on July 28, 1995 and immediately transfer the above-listed TIAA/CREF accounts and/or annuities to SUSAN RUTH CHALKER.

Petitioner's request for attorneys' fees and costs incurred in bringing the instant Petition for Order to Show Cause is denied.

DONE IN OPEN COURT this 13 day of February, 1996.

/s/ Illegible for JR McDonald
Honorable Joseph R.
McDonald
Pima County Superior Court

Copy of the foregoing mailed
this 13th day of February,
1996 to:

Tom Slutes, Esq.
SLUTES, SAKRISON, EVEN, GRANT
& PELANDER, P.C.
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Attorneys for Additional Party FIDELITY

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Tucson, Arizona 85718-0000
Attorneys for Additional Party TIAA/CREF

Mr. Robert S. Catz
c/o Shawn D Catz
1402 - 17th Ave. #B
Nashville, TN 37212
Respondent

APPENDIX 7

TEACHERS INSURANCE AND
ANNUITY ASSOCIATION OF AMERICA
COLLEGE RETIREMENT EQUITIES FUND
730 Third Avenue, New York, New York 10017

Contracts issued to:
Susan R. Chalker

To accommodate the Marital Property Agreement between Robert S. Catz and Susan R. Chalker, dated February 13, 1996, and in accordance with their Court Order:

1. 100% of the then commuted value as of July 28, 1995 under TPA Contract No. IE42653-2 (issued February 1, 1994), amounting to $37,740.96 (with a then equivalent annuity payment of $5,620.35) has been withdrawn as of July 28, 1995 and applied to TIAA TPA Contract No. ID06176-9 on the life of Susan R. Chalker, and

2. 100% of the accumulation of the Money Market Account under CREF Certificate No. Q866023-8, as of July 28, 1995, amounting to 682.817 units valued at $15.8333 each, equivalent to a dollar amount of $10,811.25,** has been withdrawn and applied to the Money Market Account under CREF Certificate No. U503706-6 on the life of Susan R. Chalker, and

3. 100% of the accumulation of the Global Equities Account under CREF Certificate No. Q866023-6, as of July 28, 1995, amounting to 128.584 units Valued at $44.0693 each, equivalent to a dollar amount of $5,666.61,** has been withdrawn and applied to the

Global Equities Account under CREF Certificate No. U503706-6 on the life of Susan R. Chalker, and

4. 100% of the accumulation of the Money Market Account under CREF SRA Certificate No. J091114-7, as of July 28, 1995, amounting to 28,621.195 units valued at $15.3023, equivalent to a dollar amount of $437.970.11,** has been withdrawn and applied to the Money Market Account under CREF SRA Certificate No. J447488-6 on the life of Susan R. Chalker.

RECORDED – TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA COLLEGE RETIREMENT EQUITIES FUND

March 20, 1996 (Date) BY GAYTHA GULBRANDSEN (Registrar)

* This amount does not reflect the interest and dividends accrued to date.

** This amount does not reflect market value changes up or down plus dividends accrued on the amount withdrawn after the above-noted date of the division.